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## TRUST BOARD

Title:	<b>Claims and Litigation Annual Report 2020/21</b>
Action:	<b>FOR DISCUSSION/NOTING</b>
Meeting:	<b>24<sup>th</sup> November 2021</b>

### **Purpose:**

To provide an update to the Board on Claims and Litigation involving the Trust in the period between 1 April 2019 to 31 March 2020. The report includes:

1. Claims
2. Inquests
3. Employment Tribunals

### **Recommendation:**

The Board is asked to note the update on Claims and Litigation and the improvement actions identified.

	Name	Title
Author:	Mercy Kusotera	Assistant Director of Corporate Governance
Executive sponsor:	Rachel Hawkins	Director of Governance

## Trust Objectives

Objective	How the report supports achievement of the Trust objectives:
Provide outstanding care	This paper includes an analysis of trends relating to clinical claims against the Trust.
Collaborate with others	
Be an excellent employer	This paper includes an update on employment law cases.
Be a sustainable organisation	The paper includes information on claims against the Trust and any damages paid.

## Trust risk register

**Risk 3166** - There is a risk that patients and service users do not receive outstanding care if services fail to remain compliant with CQC Fundamentals of Care standards.

**Risk 3163** - There a risk that the delivery of high quality care will be adversely affected if levels of staff morale reduce.

## Legal and Regulatory requirements:

N/A

## Previous Papers:

Title:	Date Presented:
Claims and Litigation Annual Report	

## Equality and Diversity implications:

Objective	How the report supports achievement of objectives:
To support the development of a Trust wide Anti-Racism Strategy and Organisational Development Plan.	Not relevant to this report
To finalise the roll out of reverse mentoring as part of all in house development programmes.	Not relevant to this report
We will measure the impact of our virtual clinical platforms, ensuring that they are fully accessible to the diverse communities we serve.	Not relevant to this report
We will ensure that the recruitment of our volunteers are from the diverse communities they serve.	Not relevant to this report
Are any of the following protected characteristics impacted by items covered in the paper	
Age <input type="checkbox"/>	Disability <input type="checkbox"/>
Gender Reassignment <input type="checkbox"/>	Marriage and Civil Partnership <input type="checkbox"/>
Pregnancy and Maternity <input type="checkbox"/>	Race <input type="checkbox"/>
Religion and Belief <input type="checkbox"/>	Sex <input type="checkbox"/>
Sexual Orientation <input type="checkbox"/>	

## 1. Claims

1.1 The Trust handled 11 claims between 1 April 2020 and 31 March 2021. The claims can be broken down as follows:

- Five (5) Clinical Negligence
- One (1) Public Liability
- Four (4) Employer Liability
- One (1) Property Expenses Scheme

1.2 The Trust received three new claims between 1 April 2020 – 31 March 2021. None of these cases resulted from a formal complaint in the first instance.

1.3 There were three (3) new claims reported between 1 April 2020 to 31 March 2021 comprising one (1) employer liability claim; one (1) clinical negligence claim and one (1) Property Expenses Scheme claim. Details included in Annex A.

1.4 There were no claims re-opened between 1 April 2020 – 31 March 2021.

1.5 One (1) Employer Liability claim closed between 1 April 2020 to 31 March 2021:

Claim Type	Closed Status	Root Cause	Service / Location
LTPS – EL	Settled out of Court – Damages Paid	Trip and Slip	Brookfields / Site Management

1.6 Total damages paid between 1 April 2020 – 31 March 2021 are as follows:

### Clinical Negligence

- Total Claim Costs paid by NHS Resolution - £Nil

### LTPS Public Liability

- Total Claim Costs paid by NHS Resolution - £Nil

### LTPS Employer Liability

- Total Claim Costs paid by NHS Resolution:

Total claim	Damages reserve	Claimant costs reserve	Defence costs reserve
£19,300	£10,000	£8,000	£1,300

- Cost to Trust (excess is £10K per claim) = £10K

### Property Expenses Scheme

- Total Claim Costs paid by NHS Resolution - £Nil

## 2. Employment Tribunals

- 2.1 In the period April 2020 to March 2021, the Trust had no cases that went to the Employment Appeal Tribunal.
- 2.2 The Trust had no case out of court settlement.
- 2.3 The Trust is committed to continuous improvement through trend analysis and learning lessons from all employment cases resolved. For example, previous tribunal cases have led to the review of relevant Trust policies.

## 3 NHS Resolution

- 3.1 The Trust is a member of the following schemes provided by NHS Resolution (previously NHS Litigation Authority):

**a) The Clinical Negligence Scheme for Trusts (CNST)**

The scheme handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995. The costs of the scheme are met by membership contributions.

**b) The Risk Pooling Schemes for Trusts**

This covers non-clinical claims and includes two separate schemes i.e. the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES).

**c) The Liabilities to Third Parties Scheme (LTPS)** - typically covers employers' and public liability claims from NHS staff, patients and members of the public.

**d) The Property Expenses Scheme (PES)** - covers "first party" losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage. PES also offers business interruption expense cover arising from property damage.

Both LTPS and PES claims are subject to excesses, with the Trust responsible for paying all claims under the schemes below excess.

- 3.2 The costs of the scheme are met by membership contributions. Individual member contribution levels are calculated based on a range of factors, including:
  - the type of Trust,
  - the specialties it provides,
  - the number of "whole time equivalent" clinical staff it employs, and
  - the Trust's claims history.

## 4. Learning and Continuous Improvement

- 4.1 In the last year, the Associate Director of Legal Services (CPFT) & Director of Governance have held meetings to discuss ongoing cases and resourcing to provide support to staff going through legal proceedings related to their role in the organisation.

## Annex A

### 1. Thematic Data for Active Cases:

Claim Type	Status	Root Cause	Service / Locality
Clinical Neg.	Damages Agreed (Out Of Court)	Misdiagnosis	Peterborough GP OOH
Clinical Neg.	Damages Agreed (Out Of Court)	Misdiagnosis	Peterborough GP OOH
Clinical Neg.	Damages Agreed (Out Of Court)	Failure to X-Ray	MIU, POW Hospital
Clinical Neg.	Letter of Response - Admission	Failure to Treat	Paediatrics Hinchingsbrooke
Clinical Neg.	Proceedings Issued / Served	Failure to Treat	Dentistry
Empl Liability	Letter of Response - Challenged	Trip and Slip	Downham Mkt Health Centre
Public Liability	Letter of Response - Admission	Falling object	DAC Peterborough
Empl Liability	Damages Agreed (Out Of Court)	Trip and Slip	Brookfields Hospital
Empl Liability	Letter of Response - Repudiated	Trip and Slip	CDC - Hill Rise - Kempston
Empl Liability	Letter of Response - Repudiated	Trip and Slip	MKUH NHS Trust
Property Exp.	Loss Adjuster Instructed	Flood Damage	DAC Peterborough

### 2. Summary of New Claims

<p>The Claimant's foot suddenly and without warning slipped into a hole created by broken/unmaintained pavement.</p> <p>Location: Milton Keynes University Hospital Date of Incident: 03.04.20 Claim ID: 503 NHSR Ref: M20LT674/001</p>	<p>Opened: 18.05.20</p> <p>Present Position: New claim received in the claim notification portal. Initial investigation suggests the claim should be repudiated as the incident locus is not the responsibility of the Trust.</p> <p>NHSR claim total comprising as follows:</p> <table border="1" data-bbox="769 1173 1442 1285"> <thead> <tr> <th>Total Claim</th> <th>Damages Reserve</th> <th>Claimant Costs Reserve</th> <th>Defence Costs Reserve</th> </tr> </thead> <tbody> <tr> <td>£12,000</td> <td>£10,000</td> <td>£2,000</td> <td>£0</td> </tr> </tbody> </table> <p>Estimated Settlement Date: 2020/21</p>	Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve	£12,000	£10,000	£2,000	£0
Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve						
£12,000	£10,000	£2,000	£0						
<p>The claim relates to flooding at the Dental Access Centre in Peterborough.</p> <p>Date of Incident: 17.8.20 NHSR Ref: M20PT674/001</p>	<p>Opened:17.8.20</p> <p>Present Position: Loss Adjuster Instructed</p> <p>NHSR claim total comprising as follows:</p> <table border="1" data-bbox="769 1554 1442 1693"> <thead> <tr> <th>Total Claim</th> <th>Damages Reserve</th> <th>Claimant Costs Reserve</th> <th>Defence Costs Reserve</th> </tr> </thead> <tbody> <tr> <td>£145,000</td> <td>£140,000</td> <td>£0</td> <td>£5,000</td> </tr> </tbody> </table> <p>Estimated Settlement Date: 2021/22</p>	Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve	£145,000	£140,000	£0	£5,000
Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve						
£145,000	£140,000	£0	£5,000						
<p>The Claim relates to a failure to consider a bacterial infection and failure to perform a full neurological examination. The claimant subsequently underwent surgery for bifrontal craniotomy with evacuation of subdural empyema.</p> <p>Location: PAU Hinchingsbrooke Hospital</p>	<p>Opened: 18.11.2020</p> <p>Present Position: Letter of Response served 15.4.21 admitting liability (with the extent of causation being reserved) based on the expert evidence. Waiting on a further expert report.</p>								

Date of Incident: 9.3.2018 NHSR Ref: M20CT674/001	Claimant solicitors advise they are currently unable to disclose any expert evidence. We will continue to seek updates.			
	NHSR claim reserve total comprising:			
	Total Claim	Damages	Claimant Costs	Defence Costs
	£1,175,000	£1,000,000	£150,000	£25,000
Settlement Date: 2021/22				

### 3. Inquests Data Active Cases Between 1 April 2020 – 31 March 2021

Circumstances of The Death	Present Position
<p>LS died from severe anaemia caused by haemolytic disease of the newborn and which developed untreated following her discharge from hospital aged 4 days on 14.12.19. Information about her ongoing risk of developing severe anaemia and the signs and symptoms to look for was not conveyed to LS' parents or to those with responsibility for her care in the community. In consequence it was not relayed back by the health visitor to the on-call paediatric registrar during a call made on 20.12.19 to express concern about the fact that LS' weight had remained static, equivalent to birthweight, for 3 days despite apparently feeding well. LS died on 23.12.19 at Hinchingsbrooke Hospital.</p>	<p>Inquest Hearing: 10-11 May 2021</p>
<p>Male patient under the care of Luton District Nursing Services following a referral from his GP on 1 July 2019. The patient was a bilateral amputee, which had resulted from a long-term condition of diabetes and lived independently at Jill Jenkins Court, Luton, which is a supported living accommodation.</p> <p>The last visit by Trust staff was Friday 17 August 2019 following which, the patient was admitted to Luton &amp; Dunstable Hospital at 11:08hrs on Saturday 18 August 2019 being generally unwell and unable to take his meds.</p> <p>The patient was confused and disoriented. Examination and investigations confirmed acute myocardial infarction, sepsis with diabetic ketoacidosis. He deteriorated quite rapidly requiring intensive care review. Despite IV fluids, antibiotics and DKA treatment, he did not respond and had a cardiac arrest at 17:37 hrs in HDU where sadly he passed away.</p> <p>The death was referred to the Coroner - reason for referral: death under 24hrs of hospital admission.</p> <p>The Trust was approached by the Coroner for patient records in September 2019 and then on 7 January 2020 for statements from the Tissue</p>	<p><b>Date of Notification: September 2015</b></p> <p>Present Position: Concluded 03.09.20</p> <p>An Inquest hearing at The Court House, Ampthill on 3 September 2020, heard before the Assistant Coroner concluded in a death of Natural Causes.</p> <p>Medical cause of death:</p> <p>I a Septicaemia and Acute Myocardial Infarction  I b Infected Sacral Pressure sores  II Diabetes Mellitus, Peripheral Vascular Disease</p> <p>The Trust provided statements from an RGN and TVN. Neither witness was required to attend court.</p>

Viability Nurse and colleague who visited the patient on 7 and 14 August 2019.

Location of Incident: Patient's Home

Location of Death: Luton & Dunstable Hospital

DOD: 18 August 2019